

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09-CR-00229-001-RJC

USA

v.

Michael Gene Terrelonge

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ORDER


THIS MATTER is before the Court upon motion of the defendant pro se seeking relief from his 18 U.S.C. § 924(c) sentences pursuant to the First Step Act of 2018 and United States v. Davis, --- U.S. --- (2019). (Doc. No. 149).

The defendant asserts he should be at liberty because his § 924(c) sentences were “stacked” and because they are unconstitutional. The First Step Act amended § 924(c)(1)(C) by striking “second or subsequent conviction under this subsection” and inserting “violation of this subsection that occurs after a prior conviction under this subsection has become final.” Pub. L. 115-135 § 403(a) (2018). However, the amendment is not retroactive to cases sentenced before the effective date of the Act. Id. § 403(b). Accordingly, the defendant is not entitled to relief from the “stacking” of his § 924(c) sentences under the First Step Act. Because the judgment imposing his sentences has become final, his attack on their constitutionality under Davis must be raised pursuant to 28 U.S.C. § 2255. The defendant has previously filed a § 2255, (Case No. 3:14-cv-229); thus, he must first seek permission of the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 2244 to file a second or successive § 2255 petition.

IT IS, THEREFORE, ORDERED that the defendant is not entitled to relief on his letter, (Doc. No. 149). The Clerk of Court is directed to send the defendant copies of § 2244 and § 2255 motion forms at the place of his incarceration.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: September 4, 2019


Robert J. Conrad, Jr.
United States District Judge

